

### **REMARKS**

In view of the above amendments and the following remarks, reconsideration of the rejections and further examination are requested. Upon entry of this amendment, claim 25 is amended and claim 30 is cancelled, leaving claims 25-29 and 31 pending with claim 25 being independent. No new matter has been added.

#### ***Examiner Interview***

Applicants appreciate the interview granted by Examiner Verderame on May 28, 2009. In the interview Examiner Verderame agreed that the currently pending claims overcome the rejection as set forth in the March 13, 2009 office action. In particular, the claim element  $M_k$  is at least 2 atom% greater than  $M_{k-1}$  ( $2 \leq k \leq n$ ) overcomes the rejection set forth in the March 13, 2009 office action, since the Examiner suggests that the cited prior art renders obvious metal content of the layers further from the light incidence plane being greater than the content found in those nearer the light incidence plane.

#### ***Rejections Under 35 U.S.C. §112, second paragraph***

Claims 25-29 and 31 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner states that claim 21 (should be claim 25) recites wherein  $M_k$  is at least 2 atom % greater than  $M_{k-1}$  ( $1 \leq k \leq n$ ) so that in the case where  $k=1$ ,  $M_{k-1}$  is zero. The Examiner states that there is no zero-th recording layer, and therefore, suggests that  $k$  should be defined as  $1 < k \leq n$ .

Claim 25 has been amended to overcome this rejection. In particular, this element has been amended to  $2 \leq k \leq n$ . Applicant appreciates the indication from Examiner Verderame that this amendment will be entered.

#### ***Claim Objection***

Claim 30 has been objected to because of a minor informality.

Claim 30 has been cancelled and therefore the objection is moot.

***Rejections Under 35 U.S.C. §103(a)***

Claims 25-29 and 31 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Kitaura et al. (U.S. 2002/0022105) in view of Uno et al. (WO 2004/027770; U.S. 2005/0253210 used as an English language translation) and Yasuda et al. (U.S. 6,221,455).

Applicants submit that the claims are allowable over the cited prior art. As discussed with Examiner Verderame in the interview, the cited prior art does not disclose nor render obvious the claim element  $M_k$  is at least 2 atom% greater than  $M_{k-1}$  ( $2 \leq k \leq n$ ).

In particular, the Examiner asserts that Yasuda (col. 8 lines 28-43) discloses that it is desirable to have the information layer nearer the light incident plane to have higher transmittance. *See* Page 5-6 of the Office Action. Additionally, the Examiner asserts that Kitaura (paragraphs [0043]-[0044]) describes the effect of adding metal to the Te-O film. Specifically, the Examiner asserts that the reference clearly discloses that "a layer having a higher metal content will be more reflective (less transmissive) than a layer having a lower metal content." *See* Page 8 of the Office Action.

Based on these two points, the Examiner concluded that it would have been obvious for those of ordinary skill in the art to modify the recording medium described in Kitaura in view of the teachings of Yasuda, i.e. to adjust the amount of M (metal) in the layers so as to adjust the transmittances of the layers and optimize the performance of the recording medium. In other words, the Examiner asserts that the claims of this application are simply an optimization modification of the prior art that is obvious and generates only predictable results, in view of the cited references.

The Examiner states on pg. 6 of the office action that one of ordinary skill in the art would accomplished this optimization by modify the recording medium of Kitaura by adding more metal to the layer further from the light incident side, in view of the teachings of Yasuda.

Applicant respectfully disagrees with the Examiner and submit that this modification of Kitaura, in fact, teaches away from the claims of the present invention. As discussed with the Examiner, claim 25 recites " $M_k$  is at least 2 atom% greater than  $M_{k-1}$  ( $2 \leq k \leq n$ )" and thus, M is closer to the light incident side than  $M_{k-1}$ . In other words, in the claimed invention, the closer a

layer is to the light incident side, the more M is contained in the layer.

Additionally, Applicants submit that Uno does not overcome the deficiencies of the combination of Kitaura and Yasuda.

Therefore, Applicants submit that independent claim 1 and its dependent claims are allowable over the cited prior art.

***Conclusion***

In view of the foregoing amendments and remarks, all of the claims now pending in this application are believed to be in condition for allowance. Reconsideration and favorable action are respectfully solicited.

Should the Examiner believe there are any remaining issues that must be resolved before this application can be allowed, it is respectfully requested that the Examiner contact the undersigned by telephone in order to resolve such issues.

Respectfully submitted,

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